OFFICE OF INDEPENDENT COUNSEL

444 NORTH CAPITOL STREET SUITE 519
WASHINGTON, D.C. 20001

January 18, 1994

By Hand

Mr. Gregory Hunt
United States Probation Office
United States District Court for
the District of Columbia
Room 2800
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: United States v. Dean, CR 92-181-TFH

Dear Mr. Hunt:

The United States of America, by and through the Office of Independent Counsel, hereby submits its comments on the preliminary Presentence Investigation Report ("Report") regarding defendant Deborah Gore Dean. The Report accurately describes the facts regarding the offense conduct. It does not, however, take into account the gravity of that conduct in making the offense level calculation.

At trial, the government proved, and the jury found, that defendant -- a high-level official who wielded enormous power at HUD -- corrupted a federal program designed to aid low-income families, and used it to benefit her family, her friends, and herself. Defendant then perjured herself when Congress tried to determine how that housing program was in fact being administered. She further perjured herself at trial and thereafter.

This case thus does not involve simply a series of gratuities, or a mere conflict of interest. Instead, it involves defendant's systematic corruption of a critical government program, and her repeated attempts to cover up that corruption. Her actions are precisely the type that cause loss of public confidence in government. A sentence that treats defendant's conduct as trivial or commonplace would cause an even greater loss of public confidence in government and the judicial system.

Accordingly, as we demonstrate in greater detail below, the Report's offense level calculation should be revised. We begin by summarizing our previous arguments regarding why the Sentencing Guidelines apply here. We then show that it is inappropriate to apply either the gratuities or conflict of interest guidelines to defendant's conduct. Finally, we demonstrate that defendant's guideline calculation should be adjusted upward to reflect her obstructions of justice both at trial and in connection with her sentencing; in particular, we show that the statement of facts that defendant submitted to the Probation Office is replete with material false statements, and itself provides a basis for an upward adjustment for obstruction.

1. Applicability of the Guidelines: The Report states that there is an issue whether the guidelines apply in this case. Report at 32. The Report notes that defendant's coconspirators received consulting fees after November 1, 1987, and that the United States still continues to disburse Mod Rehab funds connected to this offense. Id. at 33. On the other hand, the Report states, "the defendant was not employed by HUD when the guidelines went into effect." Id. The Report suggests that this distinguishes this case from Dale and Milton,[1] since in those cases "the defendants did not actually withdraw from the conspiracy." Id.

Under the decisions of this Circuit, the guidelines clearly apply here, and the Report should so state. As an initial matter, it is not correct, as the Report states, that defendant was not still employed by HUD when the guidelines went into effect. While defendant resigned her position as Executive Assistant to HUD Secretary Pierce in June 1987, she remained employed as a full-time "expert" to the Secretary until January 1988.[2] Tr. 218.

But even apart from defendant's continuing HUD employment, the

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[1] United States v. Dale, 991 F.2d 819 (D.C. Cir.), cert. denied, __ U.S. __, 114 S. Ct. 286 (1993), and United States v. Milton, 1993 U.S. App. Lexis 28385 (D.C. Cir. 1993).

[2] Similarly, while the Report notes that there was "one gratuity act" that occurred after the effective date of the Sentencing Guidelines -- Mitchell's $3,300 payment for the December 1987 birthday party -- the Report also states that "[g]iven Mr. Mitchell's relationship to the defendant's family, this party may have occurred anyway." Report at 32, n.2. But this payment was anything but inevitable. By defendant's own testimony, Mitchell found it difficult to earn money after serving his prison sentence. Tr. 2597-98; see also Tr. 819 (DeBartolomeis). It was defendant who made it possible for Mitchell to fund this extravagant birthday for her, by steering Mod Rehab funds to those who hired him. This provides an independent basis for applying the Guidelines to count one.

guidelines are fully applicable here. As the Report implicitly recognizes, these conspiracies were not complete until after the effective date of the guidelines, for two reasons. First, defendant's co-conspirators (at least in the first two conspiracies) continued to receive payments for the Mod Rehab units -- one of the primary objects of the conspiracy -- after November 1, 1987. And second, the United States continues, even now, to pay out Mod Rehab funds as a result of these conspiracies. See OIC Letter to Probation Office re Guidelines, 12/6/93.

Thus, the conspiracies themselves are clearly "straddle" offenses, and as such are subject to the Sentencing Guidelines. As a result, defendant is subject to the guidelines here unless she can show that she affirmatively withdrew from the conspiracies. But there is absolutely no proof of any such withdrawal. Even were it true that defendant herself did not perform any overt acts after November 1, 1987, that would not establish that defendant withdrew from the conspiracies. Dale flatly rejected the argument that the jury must find that each conspirator continued to be involved in the conspiracy after November 1, 1987: "[i]nstead," the court held, "the defendants had the burden of proving that they affirmatively withdrew from the conspiracy before that date, and because they failed to do so, the Guidelines were properly applied to them." Id. at 854 (emphasis added; citations omitted).[3]

This Circuit has held that a defendant can be considered to have withdrawn from a conspiracy only if there is evidence that she affirmatively acted to defeat the purposes of the conspiracy. Thus, "[t]he statute of limitations begins to run for an individual defendant involved in a continuing conspiracy from the conclusion of the conspiracy unless an individual can show that he withdrew from the conspiracy by an affirmative act designed to defeat the purpose of the conspiracy."[4] In re Corrugated Container Antitrust Litigation, 662 F.2d 875, 876 (D.C. Cir. 1981)(emphasis added). Defendant has not even attempted to make such a showing; nor could she do so. There is simply no proof that defendant acted to defeat

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[3] See Milton, 1993 U.S. App. Lexis 28385, at 29-30 ("not dispositive" that defendant did not himself perform overt act, since "[a]n act of a co-conspirator may extend the conspiracy 'so long as the act was done in furtherance of the conspiracy, was within the scope of the unlawful project, and could be reasonably foreseen as a necessary or natural consequence of the unlawful agreement.'")

[4] It follows that "before the statute runs out the individual remains liable for his own criminal acts, and also for the acts of his co-conspirators, including those acts occurring after the individual's own last overt act in furtherance of the conspiracy." Corrugated Container Antitrust Litigation, 662 F.2d at 886.

or disavow the purposes of the conspiracies.[5]

In sum, for the reasons stated above, and in our letter of December 6, 1993, the Guidelines are squarely applicable here under the controlling decisions of this Circuit, and the Report should so state.

2. The Calculation of the Base Offense Level: The Report states that the guideline for the conspiracy counts is U.S.S.G. §2C1.7, "Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions." The base offense level under this Guideline is 10. The specific offense characteristic provides that the greater of the following is to be applied: (a) the number of levels calculated under the table in §2F1.1 "[i]f the loss to the government, or the value of anything obtained or to be obtained by a public official or others acting with a public official" exceeded $2,000; or (b) 8 levels "[i]f the offense involved an elected official holding a high level decision-making or sensitive position ...." Id. (emphasis added)

Rather than using this base level and offense characteristic, however, the Report applies the level and characteristics set forth for illegal gratuities in U.S.S.G. §2C1.2. The Report justifies this by noting that the conspiracy guideline provides a cross-reference to the gratuity guideline "[i]f the offense is covered more specifically" under the latter guideline. §2C1.7(c)(4).

But as noted above, the offenses charged and proved here were not gratuity offenses.[6] Defendant was convicted of having entered into three conspiracies to defraud the United States, the goals of which were to enrich her family, herself and her co-conspirators. This is not a case in which the proof showed simply a series of "gratuities" to a government official. Instead, the evidence was

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[5] Guideline §1B1.3 is not to the contrary. That guideline deals with relevant conduct for determining the guidelines range in cases in which the guidelines do apply; it does not determine whether the guidelines apply in a particular case. In any event, even if that section were relevant to a determination of the applicability of the guidelines, it would support the government's position, not defendant's. At best, defendant's position would be analogous to that of an individual who ceases to participate actively in a drug conspiracy after all the drugs are distributed, but before all the payments for those drugs are made. Under such circumstances, it cannot be doubted that a defendant would be subject to the Guidelines.

[6] Indeed, only count three, the Kitchin conspiracy count, charges both a conspiracy to defraud the United States and a conspiracy to commit a gratuity.

overwhelming, and the jury so found, that defendant was at the center of three sophisticated conspiracies that corrupted a federal program for private purposes.

Indeed, defendant's family benefitted greatly from her conspiratorial actions: her "father," John Mitchell, and his company made more than $240,000; her family obtained the benefit of free services from Sankin, which were worth many thousands of dollars; and she herself received cash (including $4,000 from Kitchin at a time in which she was in great financial difficulty), valuable gifts, and important support for her political ambitions. It is inconsistent with the proof in this case to suggest that all that occurred here were "gratuities."

For the same reasons, it not accurate to suggest that "there are no actual losses in this case, as the Mod Rehab funds were distributed to legitimate enterprises for legal purposes." Report at 13. To be sure, the Mod Rehab projects involved in this case were built. But that does not mean that the United States and its citizens did not suffer a real loss. By virtue of defendant's conspiracies, scarce housing resources were sent not to communities selected by HUD on the basis of need, but instead to developers designated by defendant's co-conspirators. The interests of the low-income families of this country had nothing to do with how these funds were distributed. Thus, this country has paid, and is still paying, a very substantial price for defendant's actions.

It follows with even greater force that this would be a highly inappropriate case in which to apply a conflict of interest guideline. Part E of the Report suggests that a departure may be warranted here, because "[a]lthough this case involves an illegal gratuity, the offense behavior is more at[t]uned to being a conflict of interest, in that the defendant was serving as an 'agent' for the consultants during 'any proceeding, application, request for a ruling or other determination ... in which the United States is a party.'" Report at 43. Furthermore, the Report states, "[t]he gratuities cited in this case are relatively minor and could be considered gifts." Id. As the Report notes, adoption of a conflict of interest approach here would result in a guideline range of zero to six months.

This suggested departure is unwarranted by the offenses for which defendant was convicted, and is also completely inconsistent with the Report's own description of defendant's conduct. As the offense conduct portion of the Report itself demonstrates, this is not a case of a low-level government official who happens to engage in a conflict of interest, and who receives minor "gifts." The jury found that defendant was at the center of conspiracies that corrupted a major department of the federal government, in order to benefit her family and herself. In view of the jury's verdict, it would be highly inappropriate to recast defendant's conduct as simply "conflicts of interest."

Indeed, application of the conflict of interest guideline here would not only make a mockery of the jury verdict, but would have the ironic effect of making it possible that defendant -- despite having been convicted of twelve felony counts -- might receive a lighter sentence than Leonard Briscoe, who was sentenced to two years imprisonment following his conviction on two counts of having given gratuities to Dubois Gilliam, or even Lance Wilson, who was sentenced to six months imprisonment following his conviction on a single count of having given a gratuity to Gilliam. Such a disparity could not easily be explained, and would be certain to raise charges of unequal justice. Application of the conflict of interest guideline also might mean that defendant would receive a lighter sentence than individuals who have pleaded guilty and cooperated with the government, such as Thomas Demery and Philip D. Winn.

Finally, the suggestion that a downward departure may be warranted here is particularly inappropriate in light of the fact that the conspiracy guideline indicates that the very opposite should occur. Application Note 5 to §2C1.7 provides that "[w]here the court finds that the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted." That Application Note fits the facts here precisely.

In sum, it is the government's position that, pursuant to §2C1.7, the appropriate base offense level is 10; and that 11 levels should be added as a specific offense characteristic based on the money obtained by defendant's co-conspirators.[7] At a minimum, 8 levels should be added as a specific offense characteristic, since defendant was "an official holding a high level decision-making or sensitive position." We also submit that the Report should apply the upward departure provision of §2C1.7.

3. Adjustment for Obstruction of Justice: The Report makes

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[7] The consulting fees earned by defendant's co-conspirators constitute things of value "obtained or to be obtained by ... others acting with a public official," and they thus must be measured under the Fraud and Deceit table pursuant to the alternative specific offense provision of §2C1.7. This is confirmed by the grouping provision of §3D1.2(d), upon which the Report relies. Report at 33. That provision permits grouping of the conspiracies if the offense level is "determined largely on the basis of the total amount of harm or loss, ... or some other measure of aggregate harm." The aggregate fees received by defendant's co-conspirators were in excess of $1,300,000, which results in an 11 level increase under §2F1.1. See §3D1.3.

no adjustment for obstruction of justice, Report at 33, even though the Report earlier recognizes that the jury necessarily found defendant's testimony regarding the Kitchin loan to be false, id. at 13. The government submits that an adjustment for obstruction of justice is required here not only because the defendant attempted to obstruct and impede the administration of justice by her perjury during the prosecution of this case, but also because she has continued to obstruct and impede her sentencing by "providing materially false information to a probation officer in respect to a presentence ... investigation for the court ...." §3C1.1 & Application Note 3(h).

a. Obstruction at trial: At trial, defendant testified for five days on direct, and three days on cross-examination. During that testimony, defendant repeatedly committed perjury on material issues. In fact, on virtually every major issue -- including, most important, her role in Mod Rehab funding decisions -- defendant's testimony was in direct contradiction to that of every witness who testified at trial. Thus, the jury's verdict necessarily established that defendant had perjured herself.

Moreover, defendant's repeated perjury can be established not simply by inference from the jury verdict, but also by consideration of the evidence that directly contradicted her testimony. For present purposes, we discuss only a few of the more prominent examples of such perjury.

Perhaps defendant's most striking perjury involved the $4,000 payment from Kitchin charged in counts three and four. As noted in the Report, defendant's testimony that Kitchin paid her $4,000 to decorate an apartment was contradicted by the testimony of Kitchin himself, Jennings (Kitchin's partner), and the face of the check, which was marked "loan." Report at 13.

But there is even more telling proof that defendant perjured herself in this regard in an attempt to obstruct justice. On direct, defendant testified that Kitchin had agreed to purchase her brother's Watergate apartment -- which she described in detail -- and to pay her $4,000 to redecorate that apartment. She then testified that on June 15, 1987, she had finally confronted Kitchin about when he was going to buy her brother's apartment: "And we were driving down Wisconsin Avenue, and I was discussing with him basically where -- what I had bought and what we were doing and the fact that my brother was getting antsy about, you know, had he signed a contract." Tr. 2745. But as the government established on cross-examination and through a real estate agent on rebuttal, defendant's brother had in fact sold his apartment to someone else in April 1987, several months prior to this supposed conversation. Tr. 3264-65. The government thus exposed the central falsity of

defendant's testimony regarding the $4,000.[8]

Similarly, defendant perjured herself on several major issues in an attempt to avoid conviction on the conspiracy charged in count one. One of defendant's chief defenses was that she was unaware that Mitchell was being paid to act as a consultant on mod rehab projects. See Tr. 2989-90, 3003. To buttress this defense, defendant testified that, when she received the HUD Inspector General's Mod Rehab Report, she was shocked to learn that Mitchell had received payments, and she had called HUD IG Special Agent Al Cain to express her anger at these accusations. Tr. 2617. But Agent Cain testified on rebuttal that to his recollection this conversation never occurred. Tr. 3199.[9] Defendant also sought to distance herself from Mitchell by testifying on cross-examination that she did not know him well until after leaving HUD, Tr. 3019; but the government introduced extensive testimony to the contrary, as well as letters to Mitchell from defendant, while she was at HUD, addressed to "Dad" or "Daddy." See G. Exs. 17, 18.

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[8] Defendant also perjured herself by testifying that she "never discussed his [Kitchin's] having anything to do with mod rehab with him ever." Tr. 2761. This testimony was contradicted not only by Kitchin and Jennings, but by defendant's own secretary, Sherrill Nettles-Hawkins. Tr. 1436-37 (Kitchin); Tr. 1524-25 (Jennings); Tr. 1551 (Nettles-Hawkins).

[9] In her motion for new trial, defendant argued that Special Agent Cain had perjured himself, with the complicity of the prosecutors, not only by denying any recollection of this telephone call, but also by denying any recollection that in May 1986 he had attended a party in Los Angeles allegedly paid for by defendant in honor of another IG Special Agent. Under penalty of perjury, defendant submitted an affidavit stating that Agent Cain had been present at this party, and describing it in great detail. But here again, the government was able to establish that defendant had perjured herself. Indeed, having seen the affidavits and travel records submitted by the government in rebuttal -- which establish that Agent Cain was not present at this alleged party -- defendant now states that she was "mistaken," and falls back on her familiar excuse that she would not have deliberately lied about this matter, since it allegedly would be so easy for the government to disprove. Dean Reply at 26-27, n. 22. But, in truth, defendant obviously hoped that the government would not be able to prove definitively that Agent Cain was not at this party. Defendant's post-trial filings simply follow the pattern she established at trial: she will perjure herself in the hope that the government will not be able to prove her testimony to be perjurious -- and then claim, whenever she is found out, that she obviously would not perjure herself about something that could be refuted. This post-trial obstruction also warrants an upward adjustment.

Defendant likewise perjured herself with regard to her relationship to Shelby, her co-conspirator in counts one and two. On several occasions, defendant testified that Shelby had never requested Mod Rehab units from her until 1987. Tr. 2567-77. But this testimony was contrary not only to that of Shelby, but of Pam Patenaude, defendant's colleague at HUD. Patenaude testified that, after she started working for defendant in 1985, defendant instructed her to "take good care" of Shelby; and when his name came up in a funding round in 1986, "it was made clear that he was to be taken care of." Tr. 3247, 3249.

While further examples could be multiplied, the point is clear: defendant perjured herself on material issues in an attempt to obstruct her prosecution. Under the circumstances, an adjustment for obstruction of justice is required. It is, of course, true that the Court will make the ultimate ruling on whether such an adjustment is appropriate. But that does not distinguish this issue from any other sentencing issue. Nor, we submit, does it relieve the Probation Office of its responsibility to make an independent assessment of the evidence and to make appropriate sentencing recommendations.

b. Obstruction of the Probation Office: Even apart from defendant's perjury at trial, it is clear that an adjustment for obstruction is required because defendant has provided materially false information to the Probation Office.

The statement that defendant submitted to the Probation Office repeats much of her perjury at trial. Defendant's overall theme -- which is that others, and not herself, made the Mod Rehab funding decisions at issue -- was also the theme of her testimony at trial; and that testimony, as noted above, was not only rejected by the jury, but was directly contradicted by virtually every witness and by numerous documents.

Defendant's statement also is false in material particulars. In order to set the stage for her argument that she was not an important "player" at HUD, the first several pages of defendant's statement are devoted to an attempt to suggest that she found out shortly after she arrived at HUD that her "role was not to think, but to do what I was told." Report at 15. This should be contrasted with her trial testimony, in which she described in detail how, <u>almost immediately</u> upon arriving at HUD as Director of the Executive Secretariat, she began to read correspondence and to interject herself into program matters by calling other HUD officials for explanations of their actions. Tr. 2177-78. Moreover, far from being chastised for this conduct, defendant testified that Secretary Pierce told her that she was doing the right thing and should not only continue, but should bring correspondence to him so that they could work on it together. Tr. 2178-79.

Defendant then turns to the disclosures of the HUD-IG report on Mod Rehab and the Lantos Hearings, and seeks to suggest that "[i]t was months before I thought that anything happening in connection with the scandal would affect me," that she felt "a terrible sense of guilt" because she had not testified and helped the innocent people in this scandal, and that "[s]peaking to the press wasn't an option." Report at 16. Yet, far from being unaware of any danger, defendant in fact was one of the first witnesses, if not the first witness, to invoke the Fifth Amendment before the Lantos Committee; in contrast, Secretary Pierce and numerous other HUD witnesses testified without immunity both before and after her. Nor was it true that she felt speaking to the press "wasn't an option." In fact, she gave extensive interviews to the Wall Street Journal in April and May 1989 in which she sought to suggest she played only a supporting role at HUD.[10] And, rather than being concerned about saving others, she made clear that if she chose to testify before Congress, it would be damaging to others: "It will be one hell of a testimony."[11] Id. at 7.

Defendant next seeks to mislead the Probation Office about her role in the Mod Rehab program. She begins by discussing the Puerto Rico funding for Alameda Towers, which she asserts was her "first exposure to the Mod Rehab program." Report at 19. But, in fact, the proof at trial establishes that defendant had been involved in numerous Mod Rehab projects, and had been Executive Assistant for more than a year, before she took the actions regarding Alameda Towers that are charged as part of count two.

More important, with regard to Alameda Towers, defendant falsely states that "neither HUD headquarters nor I could have directed [these Mod Rehab units] to a specific developer" in Puerto Rico. Report at 20. The truth is precisely the opposite. The government proved at trial that defendant gave Sankin and Broussard 150 of the Puerto Rico Mod Rehab units in question, thereby permitting them to "sell" them to the developer of their choice. This was shown by the testimony of her co-conspirator Sankin, as well as by the developer, Cleofe Rubi. Rubi testified that Broussard had told him that he had been "assigned" 150 Mod Rehab

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[10] Defendant also repeatedly spoke to the press before, during, and after her trial in an effort to deflect the charges made against her.

[11] Likewise, defendant would have the Probation Office believe that during this period "[m]y family was reeling from the news that John Mitchell had been involved in some way, and I was trying to make sense of it for my mother and myself." Report at 17 (emphasis added). Yet the trial record is clear that defendant knew while she was at HUD that Mitchell was involved in the Mod Rehab program; indeed, her own letters show that she was in contact with him about that program.

units by defendant for use in Puerto Rico; in order to obtain those units, Rubi was forced to pay Sankin and Broussard $100,000 each. Tr. 1043, 1047. Similarly, James Wilson -- an established developer, and a witness who had no motive to lie -- testified that Broussard had approached him and told him that he was seeking a developer for Mod Rehab units to be used in Puerto Rico.[12] Tr. 1076-77. Finally, the falsehood of defendant's statement is also demonstrated by exhibits introduced at trial, as well as by other documents.[13]

Equally false is defendant's extended discussion of her role in the Mod Rehab program apart from the Alameda Towers project. Defendant claims that she did not make Mod Rehab decisions, that "[n]either Secretary Pierce nor I ever knew the shoddy way that the lists were being prepared in the Office of Housing," and that "[t]here is not one person who has ever said that I pushed or coerced them to do anything with regard to fundings ...." Report at 23, 30. But it was the consistent testimony of the witnesses at trial that it was defendant who prepared the lists of projects to be funded. Hale, Zagame, and DeBartolomeis all testified that defendant would announce what projects would receive Mod Rehab funding at ad hoc meetings conducted in her office. Tr. 726, 753-54, 762, 789 (Hale); Tr. 825-26, 951, 957, 995 (DeBartolomeis); Tr. 1724, 1729-30 (Zagame). Similarly, defendant's secretary, Ms. Nettles-Hawkins, testified that, on several occasions during the course of Mod Rehab discussions, defendant got angry with both DeBartolomeis and Demery, and told Nettles-Hawkins that since defendant was the Executive Assistant, DeBartolomeis and Demery should do what she wanted them to. Tr. 1555-56. Finally, the government introduced funding lists in defendant's handwriting. See G. Ex. 181.

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[12] Suspicious about this allocation, especially in light of Broussard's lack of expertise in the development field, Wilson asked Broussard how he had obtained this commitment of federal subsidies. Because Broussard would not disclose more details about the allocation, Wilson terminated the negotiations. Tr. 1078-80.

[13] Government Exhibit 137 was a June 7, 1985 letter from Broussard to defendant stating that Broussard "spoke to Joe Monticiollo [HUD Regional Administrator in New York] and he is putting me in contact with a group in Old San Juan that is working on units through Joe [and] D'Amato. I think Andy S. and I will be better with them than Andy's first contact. I'll speak to you when I return from Europe on June 24." This scheme is also confirmed by Sankin's notes, which were not introduced at trial. Those notes show that defendant was to arrange matters so that Rubi, who was seeking 300 Mod Rehab units, would get 150 Mod Rehab units for himself if and only if he agreed to "purchase" the remaining 150 Mod Rehab units from Sankin and Broussard.

Perhaps most damning is the testimony of defendant's own witness, Michael Dorsey, a former HUD general counsel. Referring to the period after Demery came to HUD, defendant continues to assert that "[t]he [Mod Rehab] panel in neither meeting that I attend[ed] had any information other than what Tom Demery gave us with the exception of congressional support which I don't consider 'information' about an application." Report at 30. But Dorsey's testimony directly contradicted this. According to Dorsey -- who, again, was defendant's witness -- he was in attendance at one of these panel meetings, and heard defendant comment on the projects by identifying "[b]asically who had called her or somebody who was interested in the specific projects." Tr. 3180, 3182. Moreover, Demery testified that, prior to the panel meeting, he and defendant would meet to discuss the funding requests that had come to the attention of either of them, decide which should be funded, and then present those choices to the third panel member at the "formal" meeting. Tr. 1898, 1937.

Defendant concludes her statement by describing the events leading up to her nomination to be Assistant Secretary for CPD and her testimony before the Senate. Defendant continues to argue that her testimony was true; but all the evidence, and the jury's verdict, proves otherwise.[14]

Here again, defendant's attempt to mislead the Probation Office may be shown even apart from the clear inference to be drawn from the jury verdict. A particularly telling example involves her description of her relationship with Dubois Gilliam, who, as she notes, was supposed to replace her as Executive Assistant. Report at 28. Gilliam, however, left HUD and subsequently pled guilty to felony charges following federal grand jury investigations in Mississippi and the District of Columbia. As part of her theme that she did not engage in wrongdoing at HUD, and sought to prevent such wrongdoing by others, defendant discusses Gilliam at some length, and states that she "was worried about Dubois Gilliam and told him [Pierce] so," only to be told that it was not her problem "and I was to uninvolve myself"; yet, she says, "when Dubois was asked to leave, it was I who did the asking." Report at 28.

These statements should be contrasted with defendant's 1987 testimony under oath before the District of Columbia grand jury that was investigating Gilliam. Far from suggesting to the grand jury that Gilliam may have acted improperly at HUD, defendant emphasized that she had a "very, very good relationship with Gilliam" and "have always considered him to be a friend." See Tr.

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[14] As an aside, we note that the offense conduct section of the Report does not quote defendant's perjury regarding Baltimore Uplift (counts nine and ten) or the allocation of Mod Rehab units to Maryland (counts eleven and twelve). We would respectfully request that it do so for the sake of completeness.

2839-40. Defendant did not disclose the knowledge of Gilliam's improper activities that she now claims to have had. Thus, defendant now seeks to obstruct the Probation Office by claiming to have been a foe of Gilliam's, when in fact she was a friend and ally.[15]

Finally, the Report states, evidently in reliance on information provided by defendant, that defendant did not make any significant income during the period she owned Dean & Associates from 1988 to 1989. Report at 37. This is incorrect. Defendant's own handwritten financial information, as of February 1, 1989, shows Dean & Associates having received fees, on a cash basis, of $29,700 in June 1988, $2,500 in July 1988, $11,500 in August 1988, $22,931.18 in September 1988, $27,599.14 in October 1988, and $15,100 in November 1988. A significant portion of this income came from individuals or entities with whom defendant had done business while she was at HUD, including: $1,000 from Global Research, John Mitchell's company; a regular $2,500 monthly retainer from the law firm of Lynda Murphy, a friend of defendant who had received Mod Rehab units and other benefits; and more than $7,000 from DBH Trust, an entity affiliated with Gary Horn, a developer who HUD documents show was a "special friend" of defendant and who received Mod Rehab funds after writing to her.[16]

The same February 1989 financial records also show that defendant projected accounts receivable in the sum of $598,000. Again, a number of these accounts receivable involved individuals or entities with whom she had done HUD business, including a receivable in the amount of $87,500 from Murphy's law firm and a receivable in the amount of $20,000 from DBH Trust. In addition, during the 1989 time period, defendant began to receive monthly retainer fees in the amount of $10,000 from Benton Mortgage, a HUD coinsurer.[17] Defendant also joined forces with Lance Wilson during this period -- the very same Wilson that she now would have the Probation Office believe she considered to be "very different from me," "secretive and clandestine," and a "little dangerous." Report at 17-18. In fact, as late as 1990, defendant and Wilson were trying to collect fees from a developer for having earlier obtained

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[15] **See** also note from Gilliam to defendant thanking her for her "support" in the April 7, 1987 Mod Rehab funding meeting.

[16] In addition to the 1988 payments from the Horn's DBH Trust, defendant received payments in 1989 in excess of $1,000 from Vista de San Jacinto Apartments, the very Mod Rehab project that she had helped fund for Gary Horn.

[17] In connection with the Office of Independent Counsel's investigation, Benton has pleaded guilty to unrelated felony charges.

HUD Section 8 funds for a project in South Carolina.[18]

4. Conclusion: Defendant's crimes were serious ones. She abused a high public office for private ends, and in doing so contributed to the erosion of the public's trust in government. That trust will be further eroded if such a prominent defendant -- a person who had a central role in the HUD corruption that led to a major national scandal -- receives a lenient sentence. The message will be clear to citizens and other government officials alike: if one has the right background and connections, there is no real sanction for corrupting a high government office and then lying about it before Congress, the Court, and the Probation Office. That is a message that should not be sent.

Sincerely,

Arlin M. Adams

Arlin M. Adams
Independent Counsel

cc: Stephen V. Wehner, Esq.

[18] In this regard, the government disputes the Report's conclusion that defendant does not have sufficient assets to pay a significant fine. Defendant has not established that she does not have a present or prospective ownership interest in Marwood or the Georgetown home in which she lives, or in the valuable furnishings of these residences, and thus she should not be permitted to escape liability for a substantial fine.